



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

November 19, 2004

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

RE: Docket No. R-1210

Dear Ms. Johnson:

Thank you for the opportunity to comment on the proposal to amend Regulation E (Electronic Funds Transfers) and to revise the official staff commentary to the regulation. We support the Board's efforts to provide clear guidance regarding the application of Regulation E to check conversion programs, which is an important component of the Federal government's electronic payment and collection systems.

The Treasury Department's Financial Management Service (FMS), on behalf of the Federal government, processes hundreds of millions of checks annually both at the point of sale and through our lockbox network. FMS will achieve significant cost savings for the Federal government, and ultimately the taxpayers, if we are able to convert checks to ACH debits at both point-of-sale and lockbox locations in as flexible and cost-efficient manner as possible. At the same time, FMS is mindful of the need for consumer protection and is committed to structuring its payment and collection systems so as to comply with the requirements of Regulation E. We are in a better position to do so when there is certainty rather than ambiguity when applying the requirements of Regulation E. Our specific comments on the proposal are set forth below.

Disclosure

We support the proposal to require disclosure to customers that (1) when a transaction is processed as an electronic fund transfer (EFT), funds may be debited from the consumer's account quickly (but recommend even more clarity such as "generally within 24 hours of receipt") and (2) for accounts receivable check conversion, the consumer's check will not be returned by the consumer's financial institution. We also support the requirement to provide notice to the consumer if the payee intends to collect a fee for insufficient funds electronically. Our regulation at 31 CFR Part 210 already requires these disclosures for Federal agencies, and provides safe harbor model disclosures that are consistent with the model disclosures in the Board's proposal.

We believe that the Board should provide the industry with minimum notice requirements as to the frequency and the circumstances under which disclosures should occur. For example, "Notice of conversion should occur when an account is opened and at least quarterly thereafter." However, we consider it even more important for the Board to allow flexibility in determining how disclosures may be provided because the most appropriate notification mechanism may vary from cashflow to cashflow.

#### Signed authorization for point of sale check conversion

The Board has requested comment on whether merchants or other payees should be required to obtain the consumer's written signed authorization to convert checks received at points of sale. We believe that such a requirement would impede the efficiency of check conversion without significantly improving consumer protection. Federal agencies have observed almost no negative reaction from customers to the notice equals authorization process and we have converted over 2 million checks into ACH debits at more than 220 sites during the past 3 years. Consumers at points of sale not only receive notice that their checks will be used to originate EFTs, but also receive their unnegotiated checks back. The return of the check to the consumer is a clear indication that his or her check is not being processed as a check, but rather a different payment vehicle is being used.

We do not believe that there is sufficient rationale for applying different legal standards for authorization to point of sale and accounts receivable check conversion transactions. Particularly in view of the fact that a consumer at a point of sale receives not only notice, but also the returned check, we do not see why a signed writing would be necessary in order to constitute a legally binding authorization at a point of sale, but not for accounts receivable transactions. Additionally, we would not support the extension of written authorization to accounts receivable transactions. If the Board is of the opinion that additional steps must be taken at this time to protect consumers, the proposed enforcement provisions and additional notice requirements should be sufficient.

#### Allow a payee to specify the circumstances under which a check may not be used to initiate an EFT.

We support the proposal to allow payees, through billing statements, a toll-free telephone number, a website, or other suitable notification process, to specify the circumstances under which a check may not be used to initiate an EFT. In using check information to initiate an EFT, our experience has been that there are a small number of cases in which, for processing or other technical reasons, the EFT cannot be processed as such. Unless there is flexibility to present the item for payment in the form of a check, payees will be left unable to collect on these items. This will add expense and inefficiency to the check

conversion process, because the payee will have to contact the consumer, explain the situation and seek payment by another means. In view of the fact that these are transactions to collect on payment obligations that are not the subject of a dispute, and that the consumer has acknowledged and attempted to pay, there does not seem to be any purpose served by requiring payees to resort to expensive and inconvenient manual efforts to collect on the underlying obligation.

We do not believe that any consumer harm or other risks will result from allowing a consumer to authorize an EFT or, in the alternative, a check transaction. Consumers have adequate protection against a loss resulting from an unauthorized transaction whether an item is processed as a check or as an EFT, and existing privacy laws protect consumers' financial information whether the information derives from a check or an EFT. We believe that, to the extent that some small minority of consumers are uncomfortable with check conversion, it is because of some risk they perceive related to not getting their checks back, or because of the faster debiting of their accounts. However, as a result of the Check 21 Act, consumers will quickly become accustomed to the fact that they may not receive their original checks back, and that those checks may clear more quickly than in the past. As these differences in checks and EFTs fade, we believe that any risk, whether actual or perceived, related to the way in which a transaction is settled will become insignificant to consumers. We believe it is confusing to consumers that a transfer of funds from a consumer's account to a biller's account may be subject to rules and requirements that vary depending on the circumstances in which the payment is delivered or the system through which the payment is processed. We encourage the Board to reconcile its divergent payment regulations to reflect the convergence of payments processing operations that is rapidly evolving within the industry.

#### Telephone authorization of preauthorized transfers


Regulation E provides that preauthorized EFTs from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumers. Comment 10(b)-3 states that an institution does not obtain written authorization for purposes of this provision by tape recording a telephone conversation with a consumer who agrees to recurring debits.

We agree with the proposal to delete this interpretation from comment 10(b)-3 because we believe that there are circumstances in which the tape recording of an authorization provided by telephone would constitute a written and signed (or similarly authenticated) authorization. However, we urge the Board to address the conditions necessary for a telephone authorization to satisfy the requirements of Regulation E. Without guidance from the Board, billers will be left to make decisions on an ad hoc basis. The result will likely be conflicting approaches that may confuse consumers. Notwithstanding the Board's statement that its authority to interpret the E-Sign Act is extremely limited, we

respectfully suggest that the Board has ample interpretive authority under the Electronic Fund Transfer Act to address the authorization requirements of EFTs generally, and preauthorized transfers specifically, and that the Board is in the best position to provide guidance on this issue.

We appreciate the opportunity to comment. The publication of the final rule and staff commentary is important to the progress of Treasury's check conversion program. Should you have any questions, or if you would like to meet to discuss our comments, please contact Matthew Friend at 202-874-1251 or Natalie H. Diana at 202-874-6680.

Sincerely,

  
for Gary Grippo  
Assistant Commissioner  
Federal Finance